

UNITED STATES BANKRUPTCY COURT
FOR DISTRICT OF RHODE ISLAND

IN RE: NEWPORT CREAMERY, INC.

BK No: 01- 13196
CHAPTER 7

Andrew Richardson, Trustee of the Newport Creamery, Inc. :
Plaintiff/Appellee :

Vs.

Bk. A.P. No. 01-1118

Robert E. Swain,
Rocomi Enterprises, LLC
Newport Creamery, L.P.;
NewBerg, L.P.
NewHart, L.P., and
Tarpon Highlands Development Corporation,
A/k/a Tarpon Highlands Development Company, LLC.
Defendants

FILED OCT 03 '01 16:18 USRCR1

**MEMORANDUM IN SUPPORT OF EMERGENCY MOTION TO COMPEL
DISCLOSURE PURSUANT TO 11 USC 704 (7)**

On September 28, 2001, Counsel for Defendants sent Plaintiff's Counsel attached Exhibit 1, which requested, pursuant to 11 USC 704 (7), that information be disclosed to Defendants concerning the Trustee's administration of Defendants' property, title and ownership of which the Trustee has not yet obtained with finality.

The requirements of 11 USC 704 (7) imposing mandatory duties on the Trustee are straightforward:

(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest.

Defendants are parties in interest.

The Plaintiff/Trustee is now actively attempting to sell Defendants' real and personal property, based only on a Preliminary Order now on appeal in the United States District Court For The District Of Rhode Island. The Trustee does not have a final determination that he may sell this property. Defendant has also now filed a Motion in the U.S. District Court to Withdraw The Reference of this case to the Bankruptcy Court.

The Trustee has seized Defendant Newport Creamery LLP's ice cream plant, and its inventory and distributed it to the remaining Newport Creamery stores not already closed. He has now also closed the ice cream plant.

The Trustee has recently closed a number of Newport Creamery stores at locations where certain Defendants were the Debtor's landlord.

Given the above, and other, acts by the Trustee, the request for information (and the justification for requesting such information) as set out in attached Exhibit 1 are reasonable.

Defendants respectfully request that the Trustee be Ordered to provide the information requested.

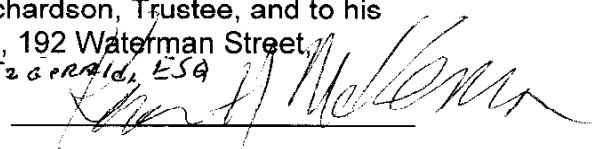
Defendants
By Their Counsel


Keven A. McKenna, #662
Keven A. McKenna, P.C.
Attorneys at Law
23 Acorn Street
Providence, RI 02903
(401) 273-8200 Tel.
(401) 521-5820 Fax.
KevenM@McKennialaw.cc

CERTIFICATION

I hereby certify that on the 3rd day of October, 2001, I caused a copy of this Motion to be mailed and Faxed to Andrew Richardson, Trustee, and to his counsel, Boyajian, Harrington, and Richardson, 192 Waterman Street, Providence, Rhode Island 02903. *John F. Fitzgerald, ESQ*

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KEVEN A. MCKENNA, P.C.
ATTORNEYS AT LAW
23 ACORN STREET
PROVIDENCE, RHODE ISLAND 02903

401-273-8200

Keven A. McKenna

401-521-5820 Fax

Steven J. Coaty
D. Anthony Parks
Richard F. Dunn
Ernesto L. Luna

September 28, 2001

John Boyajian
Boyajian Harrington & Richardson
182 Waterman Street
Providence, RI 02906

RE: Richardson v. Newport Creamery LP, Et Al.
Bk No. 01-13196

Dear Mr. Boyajian:

As you know, I represent the Defendants in the above matter, parties in interest. I write to you as attorney for Andrew Richardson, Esq., Trustee, appointed to run Newport Creamery, Inc.

In accordance with the Order of September 21, 2001, you are selling properties owned by my client, Newport Creamery, LP, and inventory owned by Newport Creamery Food Services, Inc.

Pursuant to 11 USC 704 (7), and on behalf of my clients, I ask for a prompt response, in writing, to the below requests for information concerning the Debtor's estate and its administration. If you, or Mr. Richardson, believe that it would be more efficient to provide verbal responses to some of the below requests, I would appreciate that a meeting be scheduled within the next several days, and prior to our next scheduled Court appearance. I would be willing to meet with either you or Mr. Richardson, if that would facilitate the Debtor's prompt response.

1. With respect to the three offers to purchase the Debtor estate that you disclosed in Court yesterday (or any other pending offers) please provide me with all particulars, including the identity of all offerors; the price offered; the assets proposed to be purchased, and all other particulars respecting the financing and terms of said offers to purchase. I would also appreciate copies of all letters, documents, etc. submitted to you regarding those offers. To the extent that you regard this information as confidential, I, as well as my clients, would be willing to enter into a written

confidentiality agreement with you preventing the disclosure of any information to third parties.

As parties in interest under the statute, my clients have a clear right to be informed about the **current and ongoing** plans (based only on the Preliminary Injunction) the Trustee has to sell my clients' property, title to which the Trustee has not yet obtained.

2. With respect to the ice-cream plant owned by Newport Creamery, LP (and not The Newport Creamery, Inc.) please provide an explanation as to why it was closed, together with all financial data supporting that decision. As "parties in interest", my clients have a right to be informed promptly about the business judgments exercised by the Trustee when he decided to terminate the operation of an entity which my client owns, and which has not been re-transferred, with finality.

3. With respect to the ice-cream plant, please provide all details regarding the maintenance already done, and scheduled to be done, in connection with its closure, together with a description of steps taken to "mothball" any equipment. Please disclose the particulars of the Trustee's plans to dispose of the plant's ice-cream, and any other, inventory. As you know, that inventory is owned by Newport Creamery, LP, and not The Newport Creamery, Inc. Please also provide all financial records regarding the Trustee's disposition of any assets. Please also inform me about the steps taken, or contemplated to be taken, regarding security for the plant. I would also like to know about continued insurance coverage (all types) for the plant and its contents.

4. With respect to the numerous stores the Trustee has closed since assuming control of Newport Creamery, would you please, for each store, provide:

(a). A detailed financial review and report of the facts informing the business judgment of the Trustee to close those stores, broken down by each store.

(b). A detailed description of the security provisions the Trustee has taken, at each store that was closed, to safeguard the contents of that store.

(c.) A detailed description of the disposition, or planned disposition, of all supplies, inventory, and fixtures for each store.

(d.) Copies of all notices or other communications delivered to landlords of the locations where stores were closed concerning those closures. Where written notices were not sent, please provide a description of any verbal notice given.

5. I also request a weekly copy of the back-up of the Great Plains tape, made available at the close of weekly business, from the date last provided and continuing on a weekly basis.

I realize that the Trustee may view this request as an imposition, but I cannot see how he can avoid a statutory duty involving my clients' clear right to have pertinent information regarding the management/disposition of their substantial assets. To that end, it is my clients' expectation that the Trustee will promptly begin disclosing information pertinent to the above requests. I certainly am willing to discuss the timing of these disclosures, but they should begin promptly, and be complete. I will telephone you on Monday, September 30, 2001 to discuss that schedule.

Thank you for your courtesy, and anticipated co-operation.

Sincerely,



Keven A. McKenna, Esq.

BY FAX ONLY

cc: John Fitzgerald, Esq.

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